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The Court Reporter's Viewpoint

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THE COURT REPORTER'S VIEWPOINT

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THE PURPOSE of this paper is to impress upon attorneys the need for a better understanding of the function of the court reporter and to attempt to explain how the members of the Bar may cooperate in obtaining one of the desired objectives of a court action, an accurate record. The following suggestions for attorneys are meant to promote a more understanding relationship between the practitioners and the court reporter.

Many of the older members of the Bar remember the meticulous care with which papers were once drawn; the courteousness to the Court, opposing counsel, and witnesses during the course of the trial; the deliberateness and conscientious effort of utterance which characterized the lawyers of former years.

The tempo of modern-day life and the pressure of economic necessity have apparently changed all this. As this change has taken place, more and more reliance is being placed by both jurists and attorneys upon the ability of the court reporter, who is called upon to record the testimony and comments of the Court, counsel, and witnesses, often at extreme speeds and almost invariably with entire disregard of the reporter's presence by Court and counsel alike.

The responsibility of making a record of a trial rests upon the shoulders of counsel under the supervision of the Court. But the responsibility of decipering what transpires and later making an intelligible record of it rests upon the reporter. Every court reporter should regard this responsibility with great respect.

A competent reporter should be able to translate the verbal jumbles of both counsel and witness into terms of ponderability, and he should be able to keep the record straight when others are oblivious to the very fact that a record is being made.

Keeping in mind the importance of a clean record to the Court, counsel, and most important to the client himself, it would seem a matter of compulsion that those concerned in using the record should exercise the utmost care in its making. The opposite—inadvertently, perhaps—is too often the case. It is the opinion of this author that the curriculum of the country's law schools

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should place more emphasis upon the factors which go to the proper making of the record of a Court trial.

If the members of the Bar are interested in this subject to the extent of merely considering the following suggestions, I will have accomplished my desire to create a better understanding between the attorney and the court reporter.

Counsel in the trial of an action should never lose sight of the fact that what they are saying is being recorded. If attorneys are constantly conscious of this, the end result will be more accurate and readable transcripts, which in some instances determines the victory or loss of a lawsuit.

The elimination of repetition, even though opposing counsel fails to object to the same, will effect a more orderly and logical presentation of the evidence, which will in turn result in reduced costs of transcripts, hence the reduced cost of the overall litigation.

Speech in the Courtroom

Of prime importance to the court reporter is that he hear each and every word that is uttered during the course of the trial. Failure to hear distinctly each and every word may result in some material matter being omitted from the record, or it may go so far as to alter the entire meaning of a sentence or an entire paragraph. The reporter should not be required to guess at what is being said and wonder whether his guess is correct while the testimony is progressing at a fast rate of speed.

The ordinary witness cannot be expected to possess the same degree of intelligence and learning as Court and counsel. Difficulties which are encountered by reporters with witnesses due to the nervousness of some witnesses, language peculiarities and defects and the like can be alleviated by counsel prior to the trial by admonishing witnesses as to the procedure used in the courtroom. Nothing can be more disturbing to the reporter than an unlettered, foreign-born witness. I have in mind, to illustrate the point, the client in a contested divorce action who has been henpecked all of his or her married life and uses the court trial as an opportune time to release his or her woes. Strong feeling between the opposing parties tends to increase the reporter's difficulty with witnesses' speech.

Sometimes it is more important that the reporter hear correctly the testimony than the Court because many times the Judge will request the court reporter to refer back to trials in which he has

failed to grasp the meaning of a certain point or failed to hear the progression of words and relied upon the reporter to catch what he had missed.

Simultaneous Talking

It often happens that impatient counsel will interrupt the remarks of the Court, opposing counsel, or the witnessses. This practice is downright discourteous. In that event, the burden is placed upon the reporter to not only record what the original speaker is saying but also to keep in mind the interruption so it may be recorded. Reporters usually have a reserve speed in their method of shorthand to cope with such situations, but in many cases the practice gets beyond the stage of human comprehension. This makes for confusion in the transcript with dashes to indicate interruptions and thereby increases the cost of the litigation.

Figures

If counsel should testify as to a figure, for instance $1.08, and says "one-o-eight," the reporter must be the guesser and hesitate momentarily to draw his conclusion as to the exact figure mentioned. It is somewhat embarrassing for the reporter to stop counsel every time such a situation arises. "June nineteen" may be either "June 19th" or "June, 1919."

The attorney no doubt is so well versed on the dates and figures involved in his lawsuit that he is likely to pass over them in the manner stated above. But what must the Judge and court reporter do who are hearing the case presented for the first time?

Names

Many proper names sound alike. For instance, Knudson and Knutson and Knudsen sound so similar that the reporter becomes confused as to the correct spelling; and this may necessitate his stopping the proceedings to get the correct spelling of the name. Proper names should be spelled out by counsel; but if such procedure is impractical to counsel, any proper name arising in the course of the trial should be given to the reporter before the proceedings start so that an unnecessary interruption will be averted.

Reading Into the Record

It is a known fact that a person's word-speed rises tremendously when he is reading from written material. Reporters are continually plagued with this speed in reading from various letters

and reports that concern the materiality of a lawsuit. Often the matter that is read is quite material to the proceedings; and if the reporter fails to record what is read and is unable to procure a copy from counsel, the record will not contain the intention of the reading. If attorneys would deliberately slow their word-speed down when reading any matter, it would tend to relieve a certain strain on the reporter and go toward a more accurate record. Expert medical witnesses, especially, should be admonished regarding reading from reports.

Exhibits

Often counsel will come into the courtroom with his exhibits previously marked. This tends to create confusion, especially if the reporter doesn't use the system that is denoted on the exhibits. It is more practical to leave all exhibits blank as to marking and leave it to the reporter to keep track of the exhibits as they are entered.

The practice is prevalent where counsel will bring an exhibit to the reporter's desk, lay it down, and continue with the examination of the witness; then, when the time arrives for the offer of the exhibit or for questioning the witness concerning it, there is a quizzical look on the attorney's face as to why the reporter hasn't the exhibit marked. Reporters will not forsake recording what is being said to mark an exhibit. Time must be given to the reporter to mark any and all exhibits. Reference to "this exhibit," "this letter," or "this plaintiff's exhibit" without identifying the same is meaningless when the transcript is finally typewritten.

On and Off the Record

When counsel desires certain matter to be off the record, he should so designate to the reporter. It is very perplexing to the reporter to sit idly by while a soft-toned, whispered conversation is transpiring between counsel with an aftermath of "I'll so stipulate."

Likewise, it is extremely important that counsel designate to the reporter when off-the record discussions are terminated. The reporter should not be required to guess as to what counsel desire or do not desire included in the record. Even a gesture with the hand is often sufficient warning to the reporter that the record should be resumed.

If the occasion should arise where counsel desire to confer

with the Court before the bench, these confidential conversations may fail to reach the ears of the reporter. If counsel desires such material to be included in the record, he should so designate to the reporter.

Indications

The use of meaningless expressions as "right about here," "about as long as this room" and "about this high" are more prevalent among witnesses than attorneys. However, these expressions can be defined by counsel whenever they arise. It has been the writer's experience that most attorneys are conscious of this error and are quick to correct it.

Counsel Appearing

Before the trial of an action, a good practice would be for each appearance to submit to the reporter the following data:

1. Counsel's name and firm designation.
2. The title of the action in which he is appearing.
3. The party he is representing.

Not too much difficulty is experienced by reporters in this regard; however, there are times when attorneys appear in cases and the reporter is not acquainted with them, even though they are familiar to the Court and other counsel.

In connection with the above, there are some actions which require that two or more attorneys represent one client. If such be the case, the examination of each witness should be carried on by one attorney. It becomes rather annoying to the reporter in concentrating on the testimony at hand to be confronted with an entirely strange voice interrogating the witness from some other location in the courtroom.

Direct, Cross, Redirect, and Recross

There should be no necessity—and I have conferred with many jurists and attorneys on this point—for any examination to go beyond the recross stage. A favorite pastime of attorneys seems to be, after the recross examination is concluded, to take alternative passes at the witness. The only way this type of examination can be described is in a colloquial manner, that is, excluding the regular Q-and-A setup, which tends to increase the cost of the litigation immeasurably.

Volume, Speed and Fatigue

It is difficult to impress upon members of the Bar the problem that most, if not all, reporters are confronted with as regards

a sustained speed in taking the dictation of a court action and the reaction of that sustained speed upon the mental functioning of the reporter.

From experience, the word-speed in an average trial ranges from 150 words per minute to as high as 225 words per minute, and sometimes higher. The modern-day reporting schools require a speed of at least two hundred words per minute in taking dictation before graduation and then are reluctant to graduate a prospective reporter who attains that speed. At a speed of two hundred words per minute, shorthand or stenography must be written at a rate of three words per second.

In this connection, the reader is referred to the beginning of this paper to recall the hesitations and guesses that the reporter is required to make. It can be readily seen that at a speed of two hundred words per minute, should there be a mental lapse of even a second, the lost words must be compensated for by increasing the writing speed almost twofold.

As this mental exhaustion is aggravated, the reporter must be given some respite to regain his endurance and composure. In reality, the Court directs the trial of an action and should call recesses to rest the reporter; but should the Court hesitate or inadvertently forget the recess, courtesy should be shown by either counsel to suggest a recess.

Reporting the trial of a lawsuit can be compared to running a mile at the same speed required to run the 100-yard dash. Human endurance cannot be taxed beyond two hours as regards reporting. Many reporters are hesitant to suggest a recess in the hope that either counsel or the Court will make the suggestion, with the result that far too many times the reporter will be required to take testimony for three or four hours without rest.

The degree of concentration and coordination required of the court reporter in listening to and recording words and phrases accurately and following intelligently the trial as it progresses is probably not exceeded in any other type of professional work. The pace and complexity of the court trial is not governed by the reporter, it is governed by the attorneys under the supervision of the Court; and any consideration in the form of the above suggestions by attorneys to court reporters will result in more accurate records of trials, a more understandable relationship between attorneys and court reporters, and a reduced cost of litigation.

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